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In the Supreme Court

OF THE

UNITED STATES

OCTOBER, 1906

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JAMES H. McKEN

THE STATE OF WYOMING, ex relatione The Wyoming Agricultural College, and MATT BORLAND, et al., Trustees,
Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming,
Defendant in Error.

No. 272

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING

BRIEF OF DEFENDANT IN ERROR

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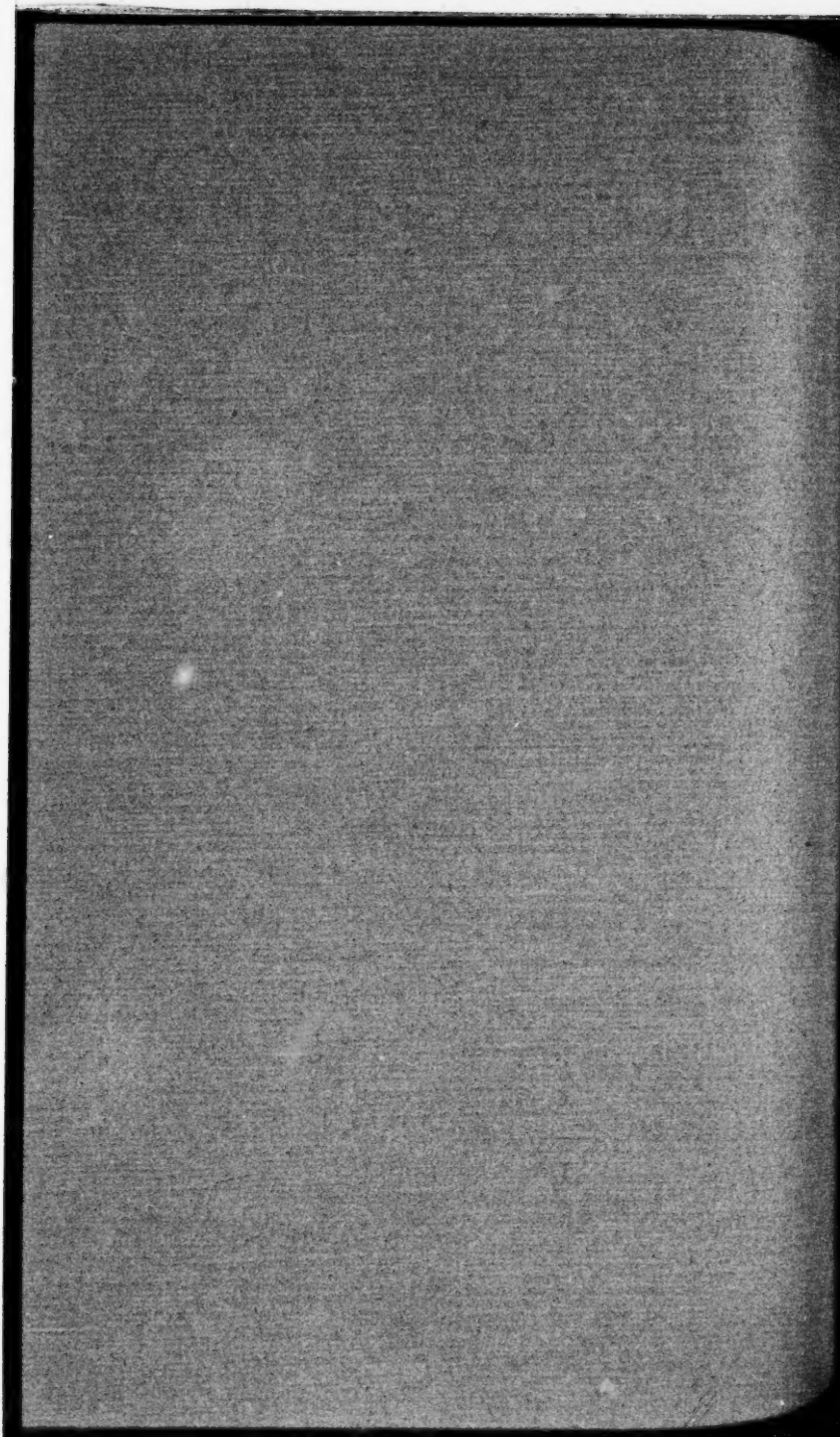

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THE STATE OF WYOMING, *ex relatione* The Wyoming Agricultural College, and MATT BORLAND, *et al.*, Trustees,
Plaintiffs in Error,
vs.
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No. 279

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

Briefly stated, the object of this suit is to obtain by *mandamus* certain funds alleged to be in the hands of the State Treasurer, to be used by the plaintiff trustees in the maintenance of an

agricultural college at Lander, in the State of Wyoming.

The funds sought to be controlled by the decision in this case are derived from three sources, viz:

1st. From the rental by the State of certain lands donated to it by the Act of Congress of July 2, 1862, (12th Stat. L. 503-505). (Rec. pp. 14-16).

2nd. From the annual donation made to the State under the Act of Congress of August 30, 1890, (26th Stat. L. 417). (Rec. pp. 17-19).

3rd. From the donations made under the Act of Congress of March 2, 1887, (24th Stat. L. 440). (Rec. pp. 19-21).

For many years like funds so received by the Treasurer of the State, have been paid over by him to the Treasurer of the University of the State of Wyoming, to be by its trustees expended in connection with that institution as prescribed by the several laws making the donations. (Rec. p. 29).

The legislature, in 1891, established the relator as "The Wyoming Agricultural College", which was afterwards located at Lander by vote of the people. In 1905 the legislature repealed the act establishing the Agricultural College. In the interim the institution had received a bequest of private property. It was claimed by the relator that the act of the legislature creating it established it as a private corporation; that the act was a con-

tract for the perpetuation of such institution, and that especially after the bequest of the property to it the act of creation had become an irrevocable contract and an irrepealable law.

It was claimed in the second place that the donation of the land and money under the Acts of Congress, in terms made to the State, were, in effect, grants to the relator college, conferring upon it, when created, a vested right, which could not be taken away by the State.

On the other hand it was claimed by the defendant that the act creating the relator college expressly and substantially made it "A State Public Educational Institution" and not a corporation, and which, being established by the State, could be disestablished by the same authority; that, even if the college were a private corporation, the reserved right in the Constitution and laws of the State to alter, amend or repeal the acts creating corporations, would prevent a corporation from claiming perpetuity or escaping the control so reserved to the legislature; and that, in either case, the fact of the bequest of private property could not divest the State of powers inherent in it, as well as expressly reserved.

As to the right claimed as a direct effect of the Acts of Congress, the defendant contended that these acts, by express terms and clear intendment, made the donations to the State, and not to the particular college or institution to which the State might afterward appropriate or apply the funds. Upon these grounds it was contended by the de-

fendant that the act repealing the act establishing the Agricultural College, was a valid exercise of the powers of the State legislature, and did not impair the obligation of any contract, or take away any right conferred by the Act of Congress upon the relator college; and that such being the law, the college had passed out of existence, had no capacity to sue, and was not the real party in interest under the claim set up.

It was further contended that even had the repealing act not been passed, there was no contract under which the college could claim the money sought to be recovered in the action; that there was no statute of the State under which the Treasurer could lawfully pay the money out, but, on the contrary, he was specifically required by the State statutes to pay the money to the University.

Defendant further contended that by reason of the provisions of the Constitution of the State, the act creating the Agricultural College was invalid, and that the Constitution itself had expressly appropriated and applied the grants of Congress to the State to the use and benefit of the University and its departments.

The Supreme Court of the State holds as follows:

1st. The University is entitled to receive for its Agricultural and Mechanical Colleges the funds in question.

2nd. The plaintiff, the Agricultural College, is not entitled to receive any of these funds.

3rd. The Wyoming Statutes exclude any rights in relator.

4th. The Wyoming Statutes do not deny any right secured by Federal Statute.

5th. The repealing act of February 7, 1905, discontinued the Agricultural College.

(Rec. pp. 39-69).

ARGUMENT.

I.

THE UNIVERSITY OF THE STATE IS ENTITLED TO BE THE RECIPIENT OF THESE FUNDS.

In considering the question as to the capacity of the University to be the recipient of the funds in question, it will be observed that the several donations in question as made under the said several acts, are to the State, this appearing plainly from a most casual reading of the acts. (Rec. pp. 14-21). They are grants upon condition to the State, as the following excerpts show:

> "There is hereby granted *to the several States*, for the purposes hereinafter mentioned,

an amount of public lands to be *appropriated by each State*".

"That the lands aforesaid, after being surveyed, shall be apportioned *to the several States.*"

"And the Secretary of the Interior is hereby directed to issue *to each of the States* in which there is not the quantity of public lands subject to sale at private entry at $1.25 per acre to which said State may be entitled under the provisions of this act, land scrip", etc., "said scrip to be sold by said State. * * * *Provided*, That in no case shall any *State to which land scrip may be thus issued*, be allowed to", etc.

"That all the expenses of management, superintendence, and taxes, from the date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, *shall be paid by the States to which they belong out of the treasuries of said States.*"

"That all moneys derived from the sale of lands aforesaid *by the States* to which the lands are apportioned * * * shall be invested in stocks of the United States or the States, or some other safe stocks, or the same may be invested *by the States* having no State stocks in any other manner after the *legislatures* of such States shall have assented thereto. * * * And the interest of which shall be inviolably appropriated *by each State* which may take and claim the benefit of this act, to the endowment, support and

maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture *and the mechanic arts*, in such manner as the *legislatures of the States* may respectively prescribe".

"That the grant of land * * authorized shall be made on the following conditions, to which, as well as the provisions hereinafter contained, *the previous assent of the several States* shall be signified by legislative acts".

"If any portion of the fund invested, * * * or any portion of the interest thereof, shall by any action or contingency be diminished or lost, *it shall be replaced by the State to which it belongs*, so that the capital of the fund shall remain forever undiminished"; permitting, however, the expenditure of ten per cent. of such amount "*whenever authorized by the respective legislatures of such States*".

"*Any State* which may take and claim the benefit of the provisions of this act, shall provide within five years at least, not less than one college. * And upon failure the grant shall cease and *the said State* shall be bound to pay to the United States the amount received", etc.

"*No State* while in a condition of rebellion or insurrection against the government of the United States, *shall be entitled* to the benefit of this act."

"*No State* shall be entitled to the benefit of this act unless it shall express *its acceptance* thereof by its legislature."

[Act of July 2, 1862.]

"That there shall be, and hereby is, annually appropriated out of any money in the treasury not otherwise appropriated, arising from the sales of public lands, to be paid as hereinafter provided *to each State*, for the more complete endowment and maintenance of a college", etc. "And the annual amount to be paid thereafter *to each State* shall be", etc. "That no money shall be paid out under this act *to any State or Territory* for the support or maintenance of a college where a distinction in race or color is made in the admission of students."

"That the sums hereby appropriated *to the States and Territories* * * * shall be annually paid on or before the thirty-first day of July of each year, by the Secretary of the Treasury, upon the warrant of the Secretary of the Interior, out of the treasury of the United States, *to the State or Territorial* treasurer, or to such officer as shall be designated by the laws of such State or Territory to receive the same. * * * * The grants of money authorized by this act are made subject to the legislative assent of the several States. * * * * Provided that payment of such installments of the appropriation herein made as shall become *due to any State* * * * * shall be made upon the assent of the governor thereof."

"That if any portion of the moneys received

by the designated officer of the State or Territory" shall be lost or misapplied, "it shall be replaced *by the State or Territory to which it belongs*, and until so replaced no subsequent appropriation shall be apportioned or paid *to such State or Territory*".

"That on or before the first day of July of each year after the passage of this act, the Secretary of the Interior shall ascertain and certify to the Secretary of the Treasury as to *each State* and Territory, whether it is entitled to receive *its share* of the annual appropriation for colleges. * * * * If the Secretary of the Interior shall withhold a certificate *from any State or Territory*, * * * the facts and reasons therefor shall be reported, * * * * in order that *the State or Territory* may, if it so desire, appeal to Congress."

[Act of Congress, Aug. 30, 1890.]

"There shall be established *under direction of the college or colleges, or agricultural department of colleges*, in each State or Territory, established, or which may hereafter be established, in accordance with the provisions of an act approved July 2, 1862. * * * * That in any State or Territory in which two such colleges have been, or may be, established, the appropriation herein made to *such State or Territory* shall be equally divided between such colleges *unless the legislature of such State or Territory shall otherwise direct.*"

"That for the purpose of paying the necessary expenses * * the sum of

fifteen thousand dollars per annum is hereby appropriated *to each State.*"

"That nothing in this act shall be construed to impair or modify the legal relations existing between any of said colleges and the government of the States in which they are respectively located."

"That in the States having colleges entitled under this section to the benefits of this act, * * * * such States shall be authorized to apply such benefits to experiments, at stations so established by such States, and in case *any State* shall have established under the provisions of said act of July 2 aforesaid *an agricultural department or experimental station, in connection with any university*, college or institution not distinctively an agricultural college or school, and such State shall have established, or shall hereafter establish, a separate agricultural college or school, which shall have connected therewith an experimental farm or station, *the legislature of such State* may apply, in whole or in part the appropriation by this act made, to such separate agricultural college or school, and no legislature shall by contract, express or implied, disable itself from so doing."

"That the grants of moneys authorized by this act are made subject to the legislative assent of the several States and Territories to the purposes of said grants. *Provided*, That payment of such installment *due to any State* * * * shall be made upon the assent of the Governor," etc.

[Act of Congress, March 2nd, 1887.]

(The italics are ours.)

Thus it will be seen that the federal acts not only do not restrict the legislature from creating an agricultural department in the University, and designating the University as being the proper party to be the recipient of the funds donated, but on the contrary, by express language, they authorize and recognize the right of the State so to do.

That the University is an institution capacitated to be the recipient of these funds, and that the State has selected it and directed that they be expended in support of its agricultural and mechanical colleges, is clearly shown by reference to the territorial laws creating the institution, as well as by the articles of the Constitution of Wyoming, establishing it with all of its several departments, and by the several acts of the State legislature accepting the donations and appropriating them to the agricultural and mechanical colleges, departments of the University, all of which laws are cited and quoted from at length in the opinion of the Supreme Court in its decision. (Rec. pp. 43-46 and 55-56.) (See Appendix.)

II.

THE PLAINTIFF, THE AGRICULTURAL COLLEGE, IS NOT ENTITLED TO ANY OF THESE FUNDS.

The Agricultural College, conceding that it still exists as created by the act of the legislature

of the State of Wyoming of January 10, 1891, is not entitled to receive the funds in question, is, we submit, conclusively established by the facts heretofore set forth showing that the University is entitled to receive them, and also from the further reason that even though there were no University, and even though there had been no act of the legislature of the State of Wyoming designating the University as the proper agency through which these funds were to be used for the purpose for which they were given, and even had the act of the legislature of January 10, 1891, creating an Agricultural College not been repealed by the act of February 7, 1905, still no legislative act of the State gives authority to the treasurer of the State to pay over the funds in question to the treasurer of the Agricultural College, and without such act on the part of the legislature the treasurer is without authority to so do.

The act creating the Agricultural College nowhere provides that upon the establishment thereof it shall become the beneficiary of the grants in question.

It assuredly is not for the treasurer to decide even that such institution is established, much less that the University is no longer entitled to the funds.

Nowhere in the legislation of Wyoming has that institution been recognized since its creation by any subsequent legislation, until the passage of the act of February 7, 1905, repealing the act of January 10, 1891, creating the institution.

We, therefore, submit, that the decision of the

Supreme Court is correct as having rightly construed not only the Acts of Congress relating to these appropriations, but as well those of the Wyoming legislature relating to the rights of the Agricultural College to these funds, even if such institution is to be held as still existing.

These propositions do not present a case of first impression, as will be seen from the following citations, from a number of which the Wyoming Supreme Court quoted at length in its opinion. (Rec. pp. 52-56).

Mass. Agricultural College v. Marden, 156 Mass. 150.

Brown University v. Rhode Island College of Agriculture and Mech. Arts, 56 Fed. 55.

University v. Hart, 7 Minn. 72.

In re Agricultural Funds, 17 R. I. 815.

State ex rel. v. Knowles, 16. Fla. 577.

Yale College v. Sanger, 62 Fed. 177.

State v. The V. & N. R. R. Co., 51 Miss. 361.

Vincenheller v. Reagan, 69 Ark. 460.

People ex rel. v. Davenport, 117 N. Y. 549.

Trustees of Rutgers College et al. v. Morgan, 70 N. J. L. 460, affirmed 71 N. J. L. 663.

Liggett v. Ladd, 17 Or. 89.

State v. Bryan, (Fla.) 39 So. Rept. 929.

Cornell University v. Fiske, 136 U. S. 152-202.

Montana ex rel. Haire, v. Rice, State Treas., No. 252, decided Jan. 28, 1907.

In all of these cases above cited the respective courts deciding them, were dealing with like funds to those involved in this case, and possibly aside from the excerpts as quoted in the opinion of the Wyoming court (Rec. pp. 52-56), no court has spoken more plainly on the question than the Supreme Court of Mississippi:

> "The fund (says that court, speaking of the fund arising out of the sale of agricultural land scrip donated by the act of Congress of July 2, 1862,) which gives rise to this litigation was donated to t[illegible]ate. * * * * The grant was accepted by the legislature. * * * * The State thereby assumed to deal with the fund. * * * * It requires no argument to show that the State could only control the fund so as to make it productive and subserve the purpose of the grant by the action of the *political department* of government. * * * * Necessarily the law-making department must administer and control the fund by the selection and establishment of one or more colleges to impart the requisite instruction."

And then, in speaking of the power of the State to control the investment of the funds, it uses this language:

> "The discretionary power of the legislature over the subject is full."

And then as to the selection of the college where the funds are to be expended, this language:

> "The foregoing observations are applicable

in the main as respects the college, or colleges that may become the beneficiaries. The legislature is free to establish one or more colleges of the character described in the Act of Congress, and make them the recipients of the interest for their support, or it may, as it has done, bestow it upon the University. These Universities are public eleemosynary corporations, which dispense the bounty of the State, their founder, to such persons as it directs. They were created by the State, and are supported by public funds, and are instrumentalities in the scheme of education. Both of them are subject to change and modification by the legislature. Against the State neither of them can set up a vested right to property, or corporate franchises, their governing boards are appointees of the State without right or power to continue the succession. The State could withdraw the interest of this fund from them and found another institution and make it the recipient of it."

State v. The V. & N. R. R. Co., 51 Miss. 361.

III.

THE WYOMING STATUTES EXCLUDE ANY RIGHT IN RELATOR.

The Wyoming constitutional provisions establishing the University with its several departments, and the several acts of the Wyoming legislature designating the University as the recipient of the

funds in question, being in no wise in conflict with the federal acts making the donations, the decision of the Wyoming Supreme Court holding that the University is entitled to the funds in question, we submit is final and binding upon this court, as will be fully seen by reference to the following cases of the very many decided by this court upon like questions.

Eustis v. Bolles, 150 U. S. 370.
Murdock v. Memphis, 20 Wall. 590.
Harrison v. Morton, 171 U. S. 38.
Lehigh Water Co. v. Borough of Easton, 121 U. S. 388-392.
State of Montana ex rel. Haire, v. Rice, State Treasurer, No. 252, decided Jan. 28, 1907.

IV.

THE WYOMING STATUTES DO NOT NOR DOES THE DECISION DENY ANY RIGHT SECURED BY FEDERAL STATUTE.

First: The Land Donation.

The claim seems to be made that the State by accepting the grant of 90,000 acres of land under the Admission Act, became obligated to the plaintiff concerning such lands. It would be unnecessary upon this point to say more than no such

question was raised in the court below, and that it first appears in the Assignment of Errors. The same arguments would also apply as are applicable to the funds donated by Congress next discussed.

SECOND: THE FUNDS DONATED BY CONGRESS.

If the State, by accepting the donations under the Morrill and other acts, entered into a contract as to their disposition, it is for the United States to complain of the breach if there be any. The relators are not parties to the contract and are in no position to invoke its protection. Again, the appropriation of the funds so donated rests solely in the good faith of the State. Its discretion in disposing of them is not controlled by the conditions prescribed in the acts, as neither a contract nor a trust following the lands or funds was thereby created. A similar question arose as to lands granted under the Arkansas Swamp Act. In passing upon it this Court said:

> "The objection that the law of California authorizing the assessment in question, impairs the obligation of a contract created between the United States and the State by the Act of Congress of September 28th, 1850, commonly known as the Arkansas Swamp Act, is founded upon a misapprehension of its provisions. (9 Stat. 519, Ch. 84.) It is true the act granted to the State all the swamp and overflowed lands within its limits, on

condition that the proceeds of the lands, 'whether from sale or by direct appropriation in kind,' should be applied, as far as necessary, in reclaiming the lands by means of levees and drains. Hence the contention of counsel is that the State is bound to carry out this condition, and apply the proceeds to the reclamation, or provide for their application to that end, and that its legislation imposing an assessment upon other lands to raise the necessary funds for that purpose, is in violation of this contract, and therefore void. The answer to this position is twofold. In the first place, if a contract was created by the Arkansas act, when the State accepted its benefits, it is for the United States to complain of the breach if there be any. The plaintiff is not a party to the contract, and is in no position to invoke its protection. But, in the second place, the appropriation of the proceeds rests solely in the good faith of the State. Its discretion in disposing of them is not controlled by that condition, as neither a contract nor a trust following the lands was thereby created."

Hagar v. Reclamation District No. 108, 111 U. S. 701-712.

Mills County v. Railroad Companies, 107 U. S. 557-566.

Cook County v. Calumet &c. Co., 138 U. S. 635-655.

State ex rel. v. Rice, Treasurer, Decided by this Court January 28, 1907.

V.

THE REPEALING ACT DISCONTINUED THE AGRICULTURAL COLLEGE.

The relator contends that the repealing act cannot have the effect assigned to it by the State Court because of Section 10 of Article I, of the Constitution of the United States. which prohibits legislation impairing the obligation of a contract.

First: The Relator College is a Public Agency.

The relator has nowhere stated the terms of the contract which it seeks to have declared inviolable. Some of the allegations of the Bill seem to rest upon the contention that relator's charter constitutes it a private eleemosynary corporation.

Provisions of State Constitution.

The State Constitution contains the following:

"Perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed. Corporations being creatures of the State, endowed for the public good with a portion of its sovereign powers, must be subject to its control."

[Art. I, Sec. 30.]

"No appropriation shall be made for char-

itable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the State, nor to any denominational or sectarian institution or association."

[ART. III, Sec. 36.]

"The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this State may as to such business be regulated, limited or restrained by law not in conflict with the Constitution of the United States."

[ART. X, Sec. 1.]

"All powers and franchises of corporations are derived from the people and are granted by their agent, the government, for the public good and general welfare, and the right and duty of the State to control and regulate them for these purposes is hereby declared. The power, rights and privileges of any and all corporations may be forfeited by wilful neglect or abuse thereof. The police power of the State is supreme over all corporations as well as individuals."

[ART. X, Sec. 2.]

THE RELATOR'S CHARTER.

The act creating relator is set out in full in the record. (Pages 22-26) Also Appendix.

The State Court has carefully considered this statute under the State Constitution and holds that relator is a public instrumentality, not a private corporation. And while this Court "must decide upon its own responsibility as to the existence and meaning of the contract," yet this Court uniformly holds that "the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt."

Tampa Waterworks Co. v. Tampa, 199 U. S. 241-243.

THE CONSTRUCTION OF THE ACT.

In its first section the Act declares that the relator "shall be a State public educational institution." Section 3 provides that the trustees shall be "appointed by the Governor by and with the advice and consent of the Senate." By Section 6, vacancies in the board of trustees "shall be filled by appointment to be made by the Governor." By clause 3, Section 9, the diplomas shall be issued "under the seal of the State." Section 12 requires relator to receive free of charge students selected by Boards of County Commissioners. By Section 17 the "Board of Visitors" must be appointed by the Governor. Sections 18 to 24 require that the seat of relator be fixed by vote of the people of the State at a general election.

The Bill alleges the location of relator by such

vote and that this was pursuant to the clause of the Constitution which says: "The legislature shall not locate any other *public institutions* except under general laws and by vote of the people."

The relator here seeks by mandamus an appropriation from the funds of the State although the Constitution (Art. III, Sec. 36, *supra*) prohibits such appropriation "to any person, corporation or community not under the absolute control of the State."

The act does not in terms create relator a corporation, nor authorize it to sue and be sued. No corporators or trustees are named in the act. No trustees were appointed until two years after relator's creation. The provisions of the act relied upon by relator to show its private character are that by Section 8 the trustees are given power,

(4) "To procure by purchase, donation, or otherwise, in the name of the State of Wyoming * * * * a suitable site, etc."

(5) "To possess and use for the benefit of the said Agricultural College the buildings and sites, etc."

(6) "To take and hold for the use and benefit of the Agricultural College any real or personal estate, and to dispose of the same in such manner as they may deem most conducive to the interests of said Agricultural College."

(7) "To expend any and all income in the promotion of the said Institution."

And by Section 13 to apply any donations in accordance with the directions of the donor.

We submit that even were the question *res integra* relator must be held a public instrumentality.

Inasmuch as similar institutions have everywhere been held public and not private, we take space to cite many cases showing the uniformity in the decisions.

Head v. University, 47 Mo. 220-224.
University of North Carolina v. Maultsby, 43 N. C. (8 Ired. Eq.) 257.
Lewis v. Whittle, 77 Va. 415.
State v. Vicksburg, &c., 51 Miss. 361.
University of Alabama v. Winston, 5 Stew. & P. (Ala). 17.
Weary v. State University, 42 Ia. 335.
Thomas v. Illinois Indus. University, 71 Ill. 310-312.
Illinois Indus. University, v. Champaign Co., 76 Ill. 184.
University v. R. R. Co., 76 N. Car. 103.
Estate of Royer, 123 Cal. 614-621.
Watson Seminary v. Pike Co. Court, 149 Mo. 57.
Board of Education v. Phillips, 67 Kan. 549.
Oklahoma &c. College v. Willis, 6 Okla. 593.
State ex rel. v. Knowles, 16 Fla. 577.
State ex rel. v. Bryan, (Fla.) 39 So. 929-949.
Tucker v. Pollock, 21 R. I. 317.
In re School Committee of North Smithfield, 26 R. I. 164.

The institution being public in character, the Legislature had full power to modify or repeal its charter.

Cases last above cited.

Dartmouth College Case, 4 Wheat. 629.

Ibid, pages 664-666.

Ibid, page 668 and following; also page 712.

Charles River Bridge v. Warren Bridge, 11 Pet. 419.

East Hartford v. Hartford Bridge Co., 10 Howard (U. S.) 511-533, 534.

Laramie County v. Albany County, 92 U. S. 307-311.

Williamson v. New Jersey, 130 U. S. 189-199.

Essex Public Road Board v. Skinkle, 140 U. S. 334.

New Orleans v. New Orleans Water Works Co., 142 U. S. 79-89-91.

C., B. & W. R. R. Co. v. Nebraska, 170 U. S. 57-72.

Attorney General ex rel. v. Lowrey, 199 U. S. 233-240.

The Effect of the Wisser Bequest.

The claim seems to be made that by Mr. Wisser's bequest, coupled with the provisions in the Act for carrying out the wishes of the donor, the relator has in some way been changed from a public to a private institution.

There is no contract relation between the

State and the donor. The donation must be presumed to have been made with knowledge of the public character of the relator and the right of the State to control or discontinue it. No question of the disposition of the Wisser bequest is before the Court. His representatives are not parties, hence their rights are not in issue. Moreover, neither the repealing act nor the decision of the State Court in any wise touches the disposition to be made of the Wisser funds.

> "It is not competent for a town, or any other mere municipal organization, which is made the trustee of such an estate or of any charity, to set up a vested right of that character as against the government, and thereby prevent the State from changing its political and municipal organization as the public interests may demand. If towns, by their charter or in any other way, are made trustees of such an estate for such purposes, their right and title as such is held subject to be defeated, whenever the State shall deem it necessary to abolish their existence as a town, or as a municipal organization."
> *Montpelier v. East Montpelier*, 29 Vt. 12-21.

In the case of *Newton v. Commissioners*, 100 U. S. 548, on pages 557 and 559, this Court passed upon the right of the legislature of Ohio to remove a county seat which had been fixed by an act of the legislature, conditioned that the citizens of the place chosen for its seat should make certain donations for the erection of public buildings, etc. This Court in discussing the question that arose and the

applicability of the Dartmouth College case, used these words:

> "The principle there laid down, and since maintained in the cases which have followed and been controlled by it, has no application where the statute in question is a *public law* relating to a *public subject* within the domain of the general legislative power of the State, and involving the *public rights* and *public welfare* of the entire community affected by it. The two classes of cases are separated by a broad line of demarcation." (The italics are the Court's.)

The Court then proceeds to discuss various government agencies and the respect in which charters and rights granted to such differ from charters to private corporations and institutions, and in respect to the government agencies concludes with these words:

> "In all these cases, there can be no contract and no irrepealable law, because they are 'governmental subjects,' and hence within the category before stated.
>
> "They involve *public interests*, and legislative acts concerning them are necessarily *public laws*. Every succeeding legislature possessed the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality. This must necessarily be so in the nature of things. It is vital to the public welfare that each one

should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require. A different result would be fraught with evil."

An interesting case upon the same question is *University v. Maultsby*, 8 Iredale Eq. (43 N. Car.) 257 on page 264. In that case the court first decided that the University at its creation was a public corporation, and then proceeded as follows:

"It is true, that since the incorporation, there may have been donations to the college; but that would not alter the nature of the foundation, nor the character of the corporation."

Another case in point is *Head v. The University of Missouri*, 47 Mo. 220 on page 225. In that case the Court say:

"The Legislature, by an act passed February 8, 1839, (Sess. Acts 1838-9, p. 184), appointed a board of commissioners to locate the University, and receive grants of land, as also bids from certain named 'counties and from the citizens thereof for such sums of money' as might be offered to secure the location of the institution. Under this act, as the case shows, 'private citizens of Boone county subscribed the sum of $108,000; and Columbia College, by its board of trustees, subscribed the buildings and apparatus, valued at $10,000, to the building fund of said University.' It further appears that the University was located in Boone county, in 'consideration' of the above mentioned subscriptions. In other words, the parties named contributed a liberal bonus to secure the location of an existing

State institution in their county. But those contributions to the building fund did not constitute the contributors founders of the University. Nor did the contributions alter the 'nature of the foundation, or change the character of the corporation.' "

A case somewhat similar is the case of *Board of Education v. Phillips*, 67 Kan. 549. There the Court say:

"The rule, therefore, that the legislature can pass no law impairing the obligation of contracts does not apply to parties dealing with a department of government concerning the future exercise of powers conferred for public purposes by legislative acts, where the subject matter of the contract is one which affects the safety and welfare of the public. In such cases 'the presumption is that, when such contracts are entered into, it is with the knowledge that parties cannot, by making agreements on subjects involving the rights of the public, withdraw such subjects from the police power of the Legislature.' "

State ex rel. v. Knowles, 16 Fla. 577.

Thomas v. Illinois Indus. University, 71 Ill. 310.

Estate of Royer, 123 Cal. 614.

Watson Seminary v. Pike County Court, 149 Mo. 57.

Tucker v. Pollock, 21 R. I. 317.

Swartz v. Commissionors, 158 Ind. (N. E.) 141.

Edwards v. Lesueur, 132 Mo. 410.

State ex rel. v. Bryan, (Fla.) 39 So. 929-949.

The Reserved Right to Repeal Private Charters.

Even were the relator a private institution, still the State has reserved the full power to alter, amend or repeal its charter.

> "As the power to grant unamendable and irrepealable charters is one readily susceptible of being greatly abused, to the prejudice of important public interests, and has been greatly abused in the past, the people in a majority of the States, in framing or amending their Constitutions, have prudently guarded against it by reserving the right to alter, amend or repeal all laws that may be passed, conferring corporate powers. These provisions give protection from the time of their adoption, but the improvident grants theretofore made are beyond their reach."
>
> Cooley on Constitutional Limitations, 6th Ed., pages 335 and 336.

For the reasons and along the lines stated by Judge Cooley the people of this State wrote into their Constitution the following provisions:

> "The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the legislature at any time when necessary for the public good and general welfare."
>
> Article X, Section 1, Constitution of Wyoming.

Such a provision in the fundamental law of the State reserves full power of repeal.

Miller v. State, 15 Wall. 478-495.
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 258-270.
Citizens' Savings Bank v. Owensboro, 173 U. S. 636-644.
Northern Central R. R. Co. v. Maryland, 187 U. S. 258-267.

We submit that the Supreme Court of the State did not err.

Respectfully submitted,

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APPENDIX

BEING

SECTIONS from the General Laws of the Territory of Wyoming, Sections from the Wyoming Constitution, and Sections from the State Laws, cited in opinion of the Supreme Court of Wyoming and Brief of Counsel.

CORPORATIONS.

Religious and Benevolent Societies, Libraries, Colleges, Academies, Fire and Military Companies.

SECTION 1. Any number of persons, not less than three, may associate themselves together in the manner hereinafter mentioned, for any of the following purposes:

First: * * * * * * *
Second: * * * * * * *
Third: * * * * * * *
Fourth: * * * * * * *

Fifth: To establish and maintain a college, academy or other like institution, for the education of youth.

Sixth: * * * * * * *

ARTICLE II, Chapter 8, General Laws of the Territory of Wyoming, passed at the first session of the Legislative Assembly, Approved December 10, 1869.

Compiled Laws of Wyoming, 1876, p. 241.

Revised Statutes Wyoming, 1899, Sec. 3225.

CHAPTER 37.

CAPITOL BUILDING AND UNIVERSITY.

AN ACT to provide for the erection of a Capitol building at the Capital of the Territory, and for other purposes.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 34. There shall be established in this Territory an institution under the name and style of "The University of Wyoming," to be located in or near the City of Laramie, in the manner hereinafter named.

SEC. 35. The objects of such university shall be to provide an efficient means of imparting to young men and young women, on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications.

SEC. 36. The government of the university shall be vested in a board of seven trustees, three of whom shall at all times be residents of the City of Laramie aforesaid.

SEC. 37. Such board of trustees shall be authorized, whenever it deems the same expedient, to incorporate under the general corporation laws of this Territory, and may thereby acquire,

in addition to the powers herein named, the general powers of a body politic and corporate.

SEC. 38. The term of office of such trustees shall be four years, except as provided in the next two succeeding sections.

SEC. 39. It shall be the duty of the governor, during the present session of the Legislative Assembly, to nominate, and by and with the advice and consent of the Legislative Council, to appoint seven residents of the Territory as members of said board of trustees, three of whom shall serve for two years, and two of whom shall serve for four years, and two of whom shall serve for six years, and hereafter, during the session of each succeeding Legislative Assembly, the governor shall nominate, and by and with the advice and consent of the Legislative Council appoint successors to such of said trustees whose terms of office shall have expired or will expire before the next session of the Legislative Assembly.

SEC. 40. Any vacancy in the said board of trustees, caused by death, resignation, removal from the Territory or otherwise, shall be filled by appointment, to be made by the governor, which appointment shall continue until the next session of the Legislative Assembly, and no longer.

SEC. 41. A majority of the members of such board of trustees shall constitute a quorum for the transaction of business, and said board shall hold regular meetings on the first Mondays of January, April, July and October of each year.

SEC. 42. The said board shall have power—

First—To elect one of its members president of such board.

Second—To appoint a secretary and treasurer from among the members of such board, and such other officers as it may deem necessary for the good order and government of said university, and to prescribe their duties and fix their compensation.

Third—To provide by resolution or otherwise for special meetings of such board.

Fourth—To possess and use for the benefit of the university the university building and site hereinbefore named, when said building shall be completed.

Fifth—To take and hold for the benefit of the university, any real or personal estate, and to dispose of the same in such manner as it may deem most conducive to the interests of the university.

Sixth—To expend the income placed under its control by the provisions of this act, and such other funds as it may receive, in such manner as shall best promote the interest and prosperity of the university.

Seventh—To elect a president and such professors, tutors, and other officers of the faculty of such university as shall be necessary, who shall hold their offices during the pleasure of the trustees.

Eighth—To prescribe the duties, salaries and emoluments of such professors, tutors and officers.

Ninth—To prescribe the course of study and discipline to be observed in the university and the price of tuition.

Tenth—To make all by-laws and rules necessary and proper to carry into effect the powers herein conferred.

SEC. 48. The president, professors and tutors of such university shall be styled the faculty, and shall have power—

First—To enforce the rules and regulations adopted by said trustees for the government of the students.

Second—To reward and censure students as they may deserve, and to suspend those who continue refractory, until a determination of the board of trustees can be had thereon.

Third—To grant and confer, by and with the consent and approbation of the trustees, such literary honors and degrees as are usually granted and conferred in other colleges and universities in the United States, and in testimony thereof to give suitable diplomas, under the seal of the Territory and signatures of the faculty.

SEC. 44. No member of the faculty of such university shall, while acting in that capacity, be a trustee.

SEC. 45. No religious qualification or test shall be required of any student, trustee, president, professor, tutor or officer of such university, or as a condition for admission for any privilege in the same; and no sectarian tenets or principles shall be taught, instructed or inculcated at said university by any president, professor or tutor therein.

SEC. 46. The trustees shall provide for the tuition, free of charge, of such students from each county as may be selected and appointed by the board of the county commissioners therein.

SEC. 47. In the management and application of any property, real or personal, granted, devised or bequeathed to the use of said university, or the proceeds thereof, the trustees shall conform to the will and directions of the donor thereof, if any such shall have been connected therewith.

SEC. 48. The said trustees shall require their

treasurer to give a bond, with sureties to be approved by them, in double the sum likely to come into his hands.

SEC. 49. The secretary of the board of trustees shall keep a true record of the proceedings of said board, and make and certify to copies thereof. He shall also keep an account of the students in said university, according to their classes, showing their respective ages and places of residence.

SEC. 50. The treasurer of said board of trustees shall keep full, true and faithful accounts of all moneys received by him as such treasurer, and of all expenditures and disbursements thereof; he shall pay out the moneys received by him as such treasurer, on the order of the board of trustees, certified by their secretary; he shall keep accurate accounts with all persons having dealings with such university; shall collect the tuition fees due the same, and shall submit a full and proper statement of the finances of the university and of his receipts and disbursements at each regular meeting of the board of trustees, and at such other times as said board may direct.

SEC. 51. A board of visitors, to consist of three persons, shall be appointed biennially, at the commencement of the collegiate year, by the governor of the Territory. It shall be their duty to make a personal examination into the state and condition of the university, and all its affairs, twice at least in each year, and report the result to the governor, suggesting such improvements as they may deem proper, which report shall be submitted to the Legislative Assembly at its next session. Such visitors shall receive no compensation for their services.

SEC. 52. To provide an income for such uni-

versity there shall be assessed upon all taxable property of the Territory, in each year after the passage of this act, a tax of one-fourth of a mill on each and every dollar of the assessed valuation of such property, which tax shall be levied, collected and paid to the territorial treasurer in the manner provided by law for the levy, collection and payment of other territorial taxes. Said tax, when so paid to the territorial treasurer, shall be paid to the treasurer of said board of trustees upon the warrant of the territorial auditor, to be issued upon request of said board of trustees.

Approved March 4, 1886.

Chap. 37, S. L. 1886.

CHAPTER 101.

AN ACT to authorize the territorial treasurer to receive and receipt for all moneys and funds donated to the Territory for school purposes.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SECTION 1. That whenever the Territory of Wyoming shall be entitled to receive any moneys or funds from the United States of America, or from any other source or authority, to be expended for the benefit of the public schools of the Territory, or held or in any manner applied for their benefit, the territorial treasurer is hereby authorized to receive and receipt for such moneys or funds, and to make such application and use of the same

as may be required by law. Should such moneys or funds be donated to the Territory, and should the act of donation require such moneys or funds to be applied or held or used in a particular manner, they shall be so applied.

SEC. 2. The territorial treasurer shall faithfully account for all moneys and funds received pursuant to the foregoing section, and he and his sureties upon his official bond shall be liable for any failure to so account for such moneys or funds.

SEC. 3. This act shall take effect from and after its passage.

Approved March 12, 1886.

[Sec, 622, R. S. Wyo. 1899.]

CHAPTER THREE—UNIVERSITY BUILDING.

SEC. 32. The board of trustees of the university of Wyoming is hereby authorized to complete the erection of the university building. The said work shall be done under the supervision of said board of trustees, and said board shall be authorized to contract for the doing of said work upon such terms and under such restrictions and limitations as to the said board shall seem advisable.

SEC. 33. For the purposes named in the last preceding section and for the purpose of paying any existing deficiency incurred in the erection of the university building, the auditor and treasurer of the territory are hereby authorized to issue the bonds of the territory in an amount not exceeding twenty-five thousand dollars, in the manner hereinafter named. The money derived from the sale

of such bonds, together with any premium received upon such sale, shall be kept in a separate fund to be known as the "university building fund," and the same shall be paid out only for the purposes named in this and the last preceding section.

SEC. 34. Section thirty-seven hundred and one of the Revised Statutes of Wyoming, is hereby amended and re-enacted so as to read as follows: "Sec. 3701. Such board of trustees shall make a biennial report to the governor not less than thirty days before each meeting of the Legislative Assembly, giving a full and complete history of the work accomplished in the university; making an itemized statement of all receipts and disbursements, stating the number of pupils, together with their places of residence, and presenting a detailed estimate of the wants and necessities of the university for the two years next ensuing."

SEC. 35. Section thirty-seven hundred and sixteen of the Revised Statutes of Wyoming is hereby amended and re-enacted so as to read as follows: "Sec. 3716. To provide an income for such university there shall be assessed upon all taxable property in the Territory in each year, a tax of one-half of a mill on each and every dollar of the assessed valuation of such property, which tax shall be levied, collected and paid to the territorial treasurer, in the manner provided by law, for the levy, collection and payment of other territorial taxes. Said tax, when so paid to the territorial treasurer, shall be paid to the treasurer of said board of trustees, upon the warrant of the territorial auditor, to be issued upon the request of said board of trustees. The compensation of the territorial treasurer for the handling of the moneys named in this section shall be limited to one-third of one per cent. upon

the money arising from the tax named in this section."

SEC. 36. There is hereby appropriated out of any funds in the territorial treasury, not otherwise appropriated, the sum of nine thousand dollars for the purpose of supplying in part an income for said university during the present year; and said money shall be paid to the treasurer of said board of trustees, upon the warrant of the territorial auditor, to be issued upon the request of the said board of trustees.

SEC. 37. Section thirty-seven hundred of the Revised Statutes of Wyoming is hereby amended and re-enacted so as to read as follows: "Sec. 3700. The government of the university shall be vested in a board of seven trustees, four of whom shall at all times be residents of the city of Laramie."

Chap. 30, S. L. Wyo. 1888.

Sections of the Wyoming Constitution Cited in the Opinion of the Supreme Court of Wyoming and Brief of Counsel.

"No *ex post facto* law, nor any law impairing the obligation of contracts, shall ever be made."

[Sec. 35, Art. I.]

"The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regu-

lating county or township affairs; incorporation of cities, towns or villages; or changing or amending the charters of any cities, towns or villages; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions; giving effect to any informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever, or amending existing charter for such purpose; for punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing in whole or in part, the indebtedness, liabilities or obligation of any corporation or person to this State or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons

convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices or prescribing the powers or duties of offices in counties, cities, townships or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable no special law shall be enacted." [Sec. 27, Art. III.]

"No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the State, nor to any denominational or sectarian institution or association." [Sec. 36, Art. III.]

"The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary." [Sec. 1, Art. VII.]

"The establishment of the University of Wyoming is hereby confirmed, and said institution, with its several departments, is hereby declared to be the University of the State of Wyoming. All lands which have been heretofore granted or which may be granted hereafter by congress unto the university as such, or in aid of the instruction to be given in any of its departments, with all other grants, donations or devises for said university, or for any of its departments, shall vest in said university, and be exclusively used for the purposes for which they were granted, donated or devised. The said lands may be leased on terms approved

by the land commissioners, but may not be sold on terms not approved by congress."

[Sec. 15, Art. VII.]

"The legislature shall provide by law for the management of the university, its lands and other property by a board of trustees, consisting of not less than seven members, to be appointed by the governor by and with the advice and consent of the senate, and the president of the university, and the superintendent of public instruction, as members *ex officio*, as such having the right to speak, but not to vote. The duties and powers of the trustees shall be prescribed by law."

[Sec. 17, Art. VII.]

"The legislature shall have no power to change or to locate the seat of government, the state university, the insane asylum, or state penitentiary, but may after the expiration of ten (10) years after the adoption of this constitution, provide by law for submitting the question of the permanent locations thereof, respectively, to the qualified electors of the state, at some general election, and a majority of all votes upon said question cast at said election, shall be necessary to determine the location thereof; but for said period of ten (10) years, and until the same are respectively and permanently located, as herein provided, the location of the seat of government and said institutions shall be as follows:

The seat of government shall be located at the City of Cheyenne, in the county of Laramie. The state university shall be located at the City of Laramie, in the county of Albany. The insane asylum shall be located at the town of Evanston, in the county of Uinta. The penitentiary shall be located in the City of Rawlins, in the county of

Carbon; but the legislature may provide by law that said penitentiary may be converted to other public uses. The legislature shall not locate any other public institutions except under general laws, and by vote of the people."

[Sec. 23. Art. VII.]

"The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this State may as to such business be regulated, limited or restrained by law not in conflict with the constitution of the United States."

[Sec. 1, Art. X.]

"All powers and franchises of corporations are derived from the people and are granted by their agent, the government, for the public good and general welfare, and the right and duty of the state to control and regulate them for these purposes is hereby declared. The power, rights and privileges of any and all corporations may be forfeited by wilful neglect or abuse thereof. The police power of the state is supreme over all corporations as well as individuals." [Sec. 2, Art. X.]

State Laws Cited in Opinion of the Supreme Court of Wyoming and Brief of Counsel.

CHAPTER 74.

ASSENTING TO AN ACT OF CONGRESS RELATING TO THE APPLICATION OF PROCEEDS FROM THE SALE OF PUBLIC LANDS.

AN ACT assenting to the provisions of an act of congress approved August thirtieth, eighteen hundred and ninety, entitled "an act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of of agriculture and the mechanic arts, established under the provisions of an act of congress, approved July second, eighteen hundred and sixty-two."

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. The University of Wyoming having been designated by the secretary of the interior as the proper institution to receive and expend the moneys appropriated by an act of congress, approved August thirtieth, eighteen hundred and ninety, entitled "an act to apply a portion of the

proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress, approved July second, eighteen hundred and sixty-two," until such time as there may be an agricultural college established in this state, separate and apart from said University of Wyoming, assent is hereby given to all the terms and conditions of the said act of congress and the grants of moneys authorized and made by said act are hereby assented to and accepted by the state of Wyoming.

SEC. 2. The treasurer of the State of Wyoming is hereby designated as the proper officer to accept and receive said moneys so granted by said act of congress, and to disburse the same in accordance with the provisions of section two of the said act of congress.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved January 10, 1891.

Chap. 74, S. L. Wyo. 1890-91.

[R. S. 1899, Sec. 499.]

CHAPTER 75.

AS TO GOVERNMENT AND MAINTENANCE OF THE UNIVERSITY.

AN ACT to amend so much of chapter one of title forty-two of the Revised Statutes of Wyoming, as relates to the establishment, government and maintenance of the University of Wyoming.

* * * * * * * * * *

"There is established in this state, at the city of Laramie, an institution of learning under the name and style of 'The University of Wyoming.'"

Sec. 1, Chap. 75, S. L. 1890-91.
[Sec. 485, R. S. Wyo., 1899]

"The objects of such university shall be to provide an efficient means of imparting to young men and young women, without regard to color, on equal terms, a liberal education, together with a thorough knowledge of the various branches connected with the scientific, industrial and professional pursuits. To this end it shall embrace colleges or departments of letters, of science, and of the arts, together with such professional or other departments as in course of time may be connected therewith. The department of letters shall embrace a liberal course of instruction in language, literature and philosophy, together with such

courses or parts of courses in the college or department of science as are deemed necessary.

The college or department of science shall embrace courses of instruction in the mathematical, physical and natural sciences, together with such courses in language, literature and philosophy as shall constitute a liberal education. The college or department of the arts shall embrace courses of instruction in the practical and fine arts; especially in the applications of science to the arts of mining and metallurgy, mechanics, engineering, architecture, agriculture and commerce, together with instruction in military tactics, and in such branches in the department of letters as are necessary to a proper fitness of students for their chosen pursuits, and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their practical application shall be expanded into full and distinct schools or departments."

Sec. 2, Chap. 75, S. L. Wyo., 1890-91
[Secs. 486-7, R. S. Wyo., 1899.]

* * * * * * * * *

"The University of Wyoming, having been designated by the secretary of the interior as the proper institution to receive and expend the moneys appropriated by an act of congress approved August thirtieth, eighteen hundred and ninety, entitled 'an act to apply a portion of the proceeds of the public lands to the more complete endowment and support of colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July second, eighteen hundred and sixty-two,' until such time as there may be an agricultural col-

lege established in this state, separate and apart from the said University of Wyoming, assent is hereby given to all the terms and conditions of said act of congress, and grants of money authorized and made by said act, by the act of March second, eighteen hundred and eighty-seven, relative to the establishment of agricultural experiment stations, or any other act for like purposes, are hereby assented to and accepted by the state of Wyoming. Except where other designation is made by congress, all moneys granted or donated by congress in aid of scientific instruction or experimentation, and set apart by the legislature for such use by the University of Wyoming, shall be accepted and received by the state treasurer, and by him placed at the disposal of the board of trustees of the said university by transfer to the treasurer of said board, for disbursement in accordance with the provisions of the act or acts of congress aforesaid."

Sec. 13, Chap. 75, S. L. Wyo. 1890-91.
[Sec. 13, R. S. Wyo. 1899.]

* * * * * * * * *

Approved January 10, 1891.

CHAPTER 92.

THE WYOMING AGRICULTURAL COLLEGE.

AN ACT providing for the establishment of "The Wyoming Agricultural College" and to provide for the location and government of the same, and for the instruction to be therein given, and for other purposes.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. There shall be established in this state "The Wyoming Agricultural College" which shall be located by vote of the people as hereinafter provided, and which shall be a state public educational institution.

SEC. 2. The objects of said agricultural college shall be to provide an efficient means of imparting to young men and young women, without regard to color, on equal terms, a liberal education and a thorough knowledge of such arts and sciences as will aid in the prosecution of agricultural pursuits with their varied applications.

SEC. 3. The government of said agricultural college shall be vested in a board of five trustees, who shall be appointed by the governor, by and with the advice and consent of the senate.

SEC. 4. The term of office of such trustees shall be four years, except as provided in the next two sections.

SEC. 5. It shall be the duty of the governor at the next session of the legislature after the location of such agricultural college as herein provided, to nominate, by and with the advice and consent of the senate, five residents of the state as members of the board of trustees of said agricultural college, three of whom shall serve for two years, and two of whom shall serve for four years, and thereafter during the session of each succeeding legislature, the governor shall nominate, and by and with the advice and consent of the senate, appoint successors to such of said trustees whose terms of office shall have expired or will expire during such session of the legislature.

SEC. 6. Any vacancy in the said board of trustees caused by death, resignation, removal from the state, or otherwise, shall be filled by appointment to be made by the governor, which appointment shall continue until the next session of the legislature and no longer.

SEC. 7. A majority of the said board of trustees shall constitute a quorum for the transaction of business, and the said board shall hold regular meetings at the seat of the said agricultural college on the first day of the months of January, April, July and October of each year.

SEC. 8. The said board of trustees shall have power:

First—To elect one of its members president of said board.

Second—To appoint a secretary and treasurer from among the members of such board and

such other officers as it may deem necessary for the good order and government of the said agricultural college, and to prescribe the duties and fix the compensation of all such officers.

Third—To provide by resolution or otherwise for special meetings of such board.

Fourth—To procure by purchase, donation or otherwise, in the name of the State of Wyoming, within or near the limits of the city, town or village chosen as the seat of said agricultural college, as hereinafter provided, a suitable site upon which to erect suitable, convenient and proper buildings for the said agricultural college and to superintend the erection of such building: *Provided*, That said trustees shall not purchase any site or contract for the erection of any building until the funds shall be in their hands with which to pay for the same.

Fifth—To possess and use for the benefit of the said agricultural college the buildings and sites that may be provided therefor.

Sixth—To take and hold for the use and benefit of the said agricultural college any real or personal estate, and to dispose of the same in such manner as they may deem most conducive to the interests of said agricultural college.

Seventh—To expend any and all income that may be placed under the control of such board, by donations or by law or otherwise, in such manner as shall best promote the interests and prosperity of the said institution.

Eighth—To elect a president, such professors, tutors and other officers of the faculty of the said institution, as they may deem necessary, who shall hold their offices during the pleasure of such trustees.

Ninth—To prescribe the duties, salaries and emoluments of such professors, tutors and officers.

Tenth—To prescribe the course of study and discipline to be observed in said institution and the price of tuition therein.

Eleventh—To make all by-laws and rules necessary and proper to carry into effect the powers herein conferred.

SEC. 9. The president, professors and tutors of said agricultural college shall be styled the faculty thereof, and as such shall have power:

First—To enforce the rules and regulations adopted by the trustees of said institution for the government of the students thereof.

Second—To reprove and censure students as they may deserve, and to suspend those who continue refractory until a determination of the board of trustees can be had thereof.

Third—To grant and confer, by and with the consent and approval of the trustees, such literary honors and degrees as are usually granted and conferred in institutions of the same class in the United States, and in testimony thereof to give suitable diplomas under the seal of the state and signatures of the faculty.

SEC. 10. No member of the faculty of the said agricultural college, shall, while acting in that capacity, be a trustee thereof.

SEC. 11. No religious qualification or test shall be required of any student, trustee, president, professor, tutor or officer of said institution, or as a condition for admission to any privilege in the same, and no sectarian tenets or principles shall be taught, instructed or inculcated at said institution, by any president, professor or tutor therein.

SEC. 12. The trustees of said institution shall provide for the tuition, free of charge, of such students from each county as may be selected and appointed by the board of county commissioners of such county.

SEC. 13. In the management and application of any property, real or personal, granted, devised or bequeathed to the use of said agricultural college, or the proceeds thereof, the trustees shall conform to the will and directions of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation.

SEC. 14. The trustees of said institution shall require their treasurer to give a bond with sureties to be approved by them, in double the sum likely to come into his hands.

SEC. 15. The secretary of said board of trustees shall keep a true record of the proceedings of the board and shall make and certify copies thereof. He shall also keep an account of the students in the institution, according to their classes, showing their respective ages and places of residence.

SEC. 16. The treasurer of said board shall keep full, true and faithful accounts of all moneys received by him as such treasurer, and of all expenditures and disbursements thereof. He shall pay out the moneys received by him as such treasurer, on the order of the board of trustees, certified by their secretary. He shall keep accurate accounts of all persons having dealings with the institution for which he is treasurer. Shall collect the tuition fees due the same and shall submit a full and proper statement of the finances of such institution, of its receipts and disbursements, at each of the regular meetings of said board, and at such other times as said board may direct.

SEC. 17. A board of visitors for said agricultural college, to consist of three persons, shall be appointed biennially, at the commencement of the college year, by the governor of the state. It shall be the duty of the board of visitors for said institution to make a personal examination into the state and condition thereof and all its affairs,twice at least in each year, and report the result to the governor, suggesting such improvements as they may deem proper, which report shall be submitted to the legislature at its next session. Such visitors shall receive no compensation for their services.

SEC. 18. The location of said Agricultural College shall be determined by vote of the people at the general election to be held on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and ninety-two. Every city, town and village in the State of Wyoming, containing not less than one hundred inhabitants, and at an elevation above the sea level of not more than fifty-five hundred feet, shall be eligible as a seat for said Agricultural College.

SEC. 19. Any city, town or village eligible as aforesaid may be nominated as a candidate for the seat of said Agricultural College in the manner provided by the law for the nomination of candidates for public offices, to be filled by the electors of the entire state, and a certificate of such nomination shall be filed with the secretary of state in the manner and at the time provided by law for certificates of nomination of candidates for offices to be filled by the electors of the entire state at the regular election to be held in November in the year one thousand eight hundred and ninety-two.

SEC. 20. The secretary of state shall certify to the county clerk of each county at the time and

in the manner required in the case of candidates for offices to be filled by the electors of the entire state at the regular election to be held in November in the year one thousand eight hundred and ninety-two, a list of all the cities, towns and villages nominated as candidates for the seat of said Agricultural College.

SEC. 21. The county clerk of each county shall cause to be printed in the official ballots provided for the general election in November, one thousand eight hundred and ninety-two, in the manner provided for the printing of the names of candidates for public offices, the names of each city, town and village nominated as a candidate for the seat of said Agricultural College as certified by the secretary of state, and shall also cause to be printed on such ballot, opposite the names of the candidates for the seat of the said Agricultural College, the words, "vote for one," and at the head of the list of the names of said candidates the words "for seat of the Wyoming Agricultural College."

SEC. 22. Each voter shall designate on his ballot at the election aforesaid, the name of the city, town or village for which he intends to vote as the seat of the said Agricultural College, in the same manner as provided by law for the designation upon such ballot of the names of candidates for public offices for whom he intends to vote.

SEC. 23. The votes, so far as relates to the location of said Agricultural College shall be canvassed and certified in all respects as is provided by law for the canvassing and certification of the votes for candidates for public offices voted for by the electors of the entire state.

SEC. 24. The city, town or village receiving

the highest vote as the seat of said Agricultural College shall be the permanent seat at or near which the same shall be located: *Provided*, however, That any and all votes that may be cast for any city, town or village not eligible, as aforesaid, shall not be counted in determining the seat of said Agricultural College.

SEC. 25. This act shall take effect and be in force from and after its passage.

Approved January 10, 1891.

Chap. 92, S. L. Wyo. 1890-91.

CHAPTER 109.

REGULATION OF EXPENDITURES FOR AGRICULTURAL COLLEGE.

AN ACT regulating the appropriation, use and expenditure of the moneys received under an Act of Congress approved March 2, 1887, entitled "An Act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an Act approved July 2, 1862, and of the Acts supplementary thereto."

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. The moneys received under an Act of Congress, approved March 2, 1887, entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an Act approved July 2, 1862, and of the Acts supple-

mentary thereto," shall be appropriated, used and expended pursuant to the provisions of this Act, and not otherwise.

SEC. 2. The trustees of the university or college at Laramie, Wyoming, in connection with which such experimental station is established shall annually, by resolution, specifically appropriate and designate the uses to which such money shall be applied and the purposes for which the same shall be expended. Such uses and purposes at all times to be within the use and purpose for which such money is donated under the Acts of congress regulating the same, and no part of such money shall be used or expended in any manner or for any purpose not covered by such appropriation, and no indebtedness shall be contracted or expenditure made in excess of such appropriation.

SEC. 3. The treasurer of the university or college in connection with which such experimental station is established shall annually, on or before the 31st day of December submit to the governor a printed report setting forth the appropriation resolution for that year and containing an itemized statement of the receipt and disbursement of such money, showing clearly the purposes for which the same has been expended and the amount thereof expended upon each experimental station. One hundred copies of such printed report shall be filed with the secretary of state for distribution among the members of the legislature and other public officers.

SEC. 4. This Act shall take effect and be in force from and after its passage.

Approved February 21, A. D. 1895.

Chap. 109, S. L. Wyo. 1895.

[Secs. 502-3, R. S. Wyo., 1899.]

CHAPTER 110.

APPROPRIATIONS FOR UNIVERSITY.

AN ACT concerning appropriations for the support and maintenance of the University of Wyoming and requiring an annual accounting of the expenditures of the same.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. Hereafter there shall be appropriations made by the legislature of the moneys intended for the support and maintenance of the University of Wyoming, and such appropriations shall specify as nearly and accurately as the same can be done the specific purposes for which such moneys are intended and may be used. Such appropriations shall apply to and include all moneys received by the university from the United States for the endowment and support of colleges for the benefit of agriculture and mechanic arts, but moneys so received from the United States shall be appropriated, applied and used solely for the purposes specified in the Acts of Congress regulating the same. No expenditure shall be made in excess of such appropriation and no moneys so appropriated shall be used for any purpose other than that for which they are appropriated.

SEC. 2. It shall be the duty of the treasurer of the university, immediately after the close of each current year, to submit to the governor a printed report containing an itemized account of all moneys received for the support and maintenance of the university for that year, and of all expenditures made therefrom; and he shall at the same time file in the office of the secretary of state, for distribution among the members of the legislature and other public officers, one hundred copies of such report.

SEC. 3. This Act shall take effect and be in force from and after its passage.

Approved February 21, 1895.

Chap. 110, S. L. Wyo. 1895.
[Sec. 501, R. S. Wyo., 1899.]

CHAPTER 13.

AGRICULTURAL COLLEGE LAND FUNDS.

AN ACT relating to the custody, loaning and investment of the proceeds arising from the sale and rental of the public lands donated by Congress to this State for the use and support of the Agricultural College, and providing for the use of the profits and interest income therefrom.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That during such time as the University of Wyoming shall be and remain the recip-

ient of the funds donated by the United States Government to the State, under the Act of Congress of March 2nd, 1887, establishing agricultural experiment stations, and the Act of Congress of August 30th, 1890, applying certain moneys in aid of agricultural colleges, and all Acts of Congress amendatory thereof or supplemental thereto, the Treasurer of the State shall, upon the order of the Board of Trustees of said University, invest all moneys in his hands derived or arising from the sale, disposal or rental of the lands or any of them, donated to this State by Congress for the use and support of an Agricultural College, in such securities and loans as may be unanimously approved by all the Trustees present at any regular meeting of said Board of Trustees of said University, provided, however, that no profit or interest from said loans or investments shall be so paid over for the support of said institution as hereinafter provided, until all loss or losses, if any, out of the principal of said funds shall be made good and restored out of the said profits and interest; said loans or investments to be made in the name of the State of Wyoming, for the use of the Agricultural College Fund, the proceeds and payments made upon or derived from said loans or investments, both principal and interest, to be paid into the Treasury of the State for the use of said fund, the principal for re-investment and the profit and interest for the use of said College as herein provided.

SEC. 2. Said fund shall be invested in bonds of the United States, of this State, or in bonds yielding not less than five per centum per annum upon the par value thereof issued by any county, municipal corporation or school district of this State.

SEC. 3. The net interest and profit received and derived from any loan or investment made in pursuance of the authority conferred by the last preceding section after all loss or losses have been made good as aforesaid shall at all times be available for use and may be used by the Board of Trustees of said University for any purpose connected with the supporting and maintenance of the Agricultural College at the University of Wyoming, not inconsistent or in conflict with any Act of Congress herein referred to, or any Act amendatory thereof or supplemental thereto.

SEC. 4. This Act shall take effect and be in force from and after its passage.

Approved February 10th, A. D. 1899.

Chap. 13, S. L. 1899.

[Sec. 530, R. S. Wyo., 1899.]

CHAPTER 51.

REPORTS OF UNIVERSITY.

AN ACT relating to the reports to be made by the President, Secretary and Treasurer of the Board of Trustees of the University of Wyoming, and repealing Section 7 of Chapter 75 of the Laws of 1891, Section 3 of Chapter 109 of the Laws of 1895, and Section 2 of Chapter 110 of the Laws of 1895.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. At the close of each scholastic year, (June 30th), the Trustees of the University

of Wyoming, through their President, shall make a report in detail to the Governor, exhibiting the progress, condition and wants of the University and of each school or department thereof; the course of study in each, the number of professors and students, together with the nature, costs and results of important investigations, and such other information as they may deem important, or as may be required by any law of this State, or of the United States. Accompanying such report, and as a part thereof, the Secretary and Treasurer of the Board of Trustees shall unite in an itemized report showing the amount of receipts and disbursements for the year, as had and made by said Board, showing the appropriation resolution for that year, showing clearly the purposes for which the same have been expended, and the amount thereof expended upon each school or department of work, including the experiment station.

SEC. 2. * * * * *

SEC. 3. * * * * * *

SEC. 4. This Act shall take effect and be in force from and after its passage.

Approved February 18th, A. D. 1899.

Chap. 51, S. L. Wyo. 1899.

[Sec. 402, R. S. Wyo., 1899.]

CHAPTER 14.

INVESTMENT OF UNIVERSITY FUNDS.

AN ACT to amend and re-enact Section five hundred and twenty of the Revised Statutes of Wyoming, 1899, relating to the investment of Agricultural College Land Income funds.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That Section five hundred and twenty of the Revised Statutes of Wyoming, 1899, relating to the investment of Agricultural College Land Income Funds be amended and re-enacted, so as to read as follows:

Sec. 520. During such time as the University of Wyoming shall be and remain the recipient of the funds donated by the United States government to the state, under the act of congress of March 2, 1887, establishing agricultural experiment stations, and the act of congress of August 30, 1890, applying certain moneys in aid of agricultural colleges, and all acts of congress amendatory thereof and supplemental thereto, the treasurer of the state shall, upon the order of the board of trustees of said university, invest all moneys in his hands derived or arising from the sale, disposal or rental of

the lands or any of them, donated to this state by congress for the use and support of an agricultural college, in such securities and loans as may be approved by the president, vice president and treasurer of said board of trustees of said university, provided, however, that no profit or interest from said loans or investments shall be so paid over for the support of said institution as hereinafter provided, until all loss or losses if any, out of the principal of said funds shall be made good and restored out of the said profits and interest; said loans or investments to be made in the name of the State of Wyoming for the use of the Agricultural College Fund, the proceeds and payments upon or derived from said loans or investments, both principal and interest to be paid into the treasury of the state for the use of said fund, the principal for reinvestment, and the profit and interest for the use of said college as herein provided.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 9th, 1901.

Chap. 14, S. L. 1901.

CHAPTER 42.

AGRICULTURAL COLLEGE FUNDS.

AN ACT to amend and re-enact Section 520 of the Revised Statutes of Wyoming, 1899, as amended by Chapter 14, of the Session Laws of Wyoming, 1901, and to repeal Section 521, of the Revised Statutes of Wyoming, 1899, relating to the investment of the Agricultural College Permanent Land Fund, and providing for an Agricultural College Permanent Fund of 1903, and appropriating the rentals of Agricultural College lands and the interest and profit on Agricultural College funds.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That Section 520, of the Revised Statutes of Wyoming, 1899, as amended by Chapter 14, of the Session Laws of Wyoming, 1901, be amended and re-enacted, so as to read as follows:

SEC. 520. During such time as the University of Wyoming shall be, and remain the recipient of the funds, donated by the United States Government, to the State, under the act of Congress of March 2, 1887, establishing agricultural experiment stations and the act of Congress of August 30, 1890, applying certain moneys in aid of Agricultural Col-

leges, and all acts of Congress amendatory thereof and supplemental thereto, the Treasurer of the State shall invest in the same class of securities, and at the same rate of interest as provided by law for State funds, all moneys in his hands, derived or arising from the sale of the lands, or any of them, donated to this State by Congress for the use and support of an Agricultural College; such securities to be approved as other loans of State moneys are approved, except that in addition thereto they shall be approved by the President or the Vice President of the Board of Trustees of the State University. Provided, however, that no profit or interest from such loans or investments shall be paid over for the support of said institution, as hereinafter provided, until all loss or losses, if any, out of the principal of said funds, shall be made good and restored out of said profits and interest; said loans or investments to be made in the name of the State of Wyoming, the profit and interest upon, or derived from such loans and investments, to be paid into the Treasury of the State, for use as provided by Section 522, Revised Statutes of 1899; this section to apply to all moneys that may in any way become a part of the Agricultural College Permanent Land Fund.

SEC. 2. The moneys now in the Agricultural College Land Income Fund, in the hands of the State Treasurer, are hereby constituted a permanent fund, to be known as "The Agricultural College Permanent Fund of 1903," and the same is to be loaned or invested in the manner described by Section 1 of this act, or in whatever manner may be designated by law.

SEC. 3. All moneys hereafter arising from the rentals of lands, known as "Agricultural College

Lands," the interest and profits derived from the investment of the "Agricultural College Permanent Land Fund," and the interest and profits derived from the investment of the "Agricultural College Permanent Fund of 1903," are hereby appropriated and made available for use and may be used by the board of trustees of the University of Wyoming for any purpose connected with the supporting and maintenance of the Agricultural College at the University of Wyoming, not inconsistent or in conflict with any act of Congress referred to, or any act amendatory or supplemental thereto; said funds to be paid by the State Treasurer to the Treasurer of the Board of Trustees of the State University, upon the warrant of the State Auditor, to be issued upon request of said Board of Trustees.

SEC. 4. That Section 521, of the Revised Statutes of Wyoming, be and the same is hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 19th, 1903.

Chap. 42, S. L. Wyo. 1903.

CHAPTER 10.

REPEAL OF WYOMING AGRICULTURAL COLLEGE.

AN ACT to repeal Chapter 92 of the Session Laws of the State of Wyoming of the years A. D. 1890-1891, being an act entitled "An act providing for the establishment of The Wyoming Agricultural College, and to provide for the location and government of the same, and for the instruction to be given therein, and for other purposes," approved January 10th, A. D. 1891; and also to repeal so much of said act as is embraced in Sections 504 to 519, both inclusive, of Chapter 2, Title 6, of the Revised Statutes, Wyoming, 1899, entitled "The Wyoming Agricultural College."

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That Chapter 92 of the Session Laws of the State of Wyoming of the years A. D. 1890-1891, being an act entitled, "An act providing for the establishment of 'The Wyoming Agricultural College,' and to provide for the location and government of the same, and for the instruction to be therein given, and for other purposes," approved January 10th, A. D. 1891; and also so

much of said act as is embraced in Sections 504 to 519, both inclusive, of Chapter 2, Title 6, of the Revised Statutes of Wyoming, 1899, entitled "The Wyoming Agricultural College," be and the same are hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 7th, 1905.

84 Pac. 90, *Agric. College v. Irvine.*

Chap. 10, S. L. Wyo. 1905.

RELIEF OF WYOMING AGRICULTURAL COLLEGE.

The sum of four hundred and forty dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the State Treasury, not otherwise appropriated, to reimburse the Wyoming Agricultural College for two-thirds of the appraised value of live stock slaughtered by order of the State Veterinarian.

[Sec. 15, Chap. 99, S. L. Wyo. 1905.]